sion. Further assets of the bank were then discovered, and the stockholders claimed to be subrogated to the depositors' right to share these assets with the general creditors. *Held*, the stockholders should be so subrogated. *Arthur* v. *Peoples Bank of Union* (S. C.), 83 S. E. 778. See NOTES, p. 373.

CRIMINAL LAW—FORCIBLE BREAKING.—The defendant was indicted for forcibly breaking and entering a chicken coop, the door of which was partly open and held in position by bricks and a stick. *Held*, to push the door further open was a sufficient breaking. *Goins* v. *State* (Ohio), 107 N. E. 335.

An interesting question, long disturbing the courts, is whether there is a sufficient common law breaking where a window or door partially open is pushed further open to make an entry. By the common law rule it was deemed a man's folly and negligence if he left his doors and windows open and one entering under such circumstances was not guilty of burglary. 4 BLACKSTONE, COMM., 15 Ed. 226. Extending this doctrine, the English cases hold that where a man leaves his doors or windows partially open to open them further to permit ingress is not sufficient breaking to support an indictment for burglary. *Rex* v. *Smith*, 1 Moody C. C. 178.. See *Rex* v. *Hyams*, 7 Car. & P. 441. This rule finds favor with the Massachusetts authorities. *Commonwealth* v. *Steward* (Mass.), 7 Dane Abr. 136; *Commonwealth* v. *Hages*, Id.; *Commonwealth* v. *Strupney*, 105 Mass. 588, 7 Am. Rep. 556. And this was deemed established law for a number of years in this country. BISHOP, STATUTORY CRIMES, 2 Ed., § 312. Contributory negligence, while available as a defense in an action of tort, should be no defense to a prosecution for burglary as the latter is a crime against the state. There is a tendency to depart from the old construction and to hold that pushing a door or window further open is a forcible breaking. *State* v. *Lapoint* (Vt.), 88 Atl. 523; *State* v. *Sorenson* (Ia.), 138 N. W. 411; *People* v. *White*, 153 Mich. 617, 117 N. W. 161, 17 L. R. A. (N. S.) 1102, 15 Ann. Cas. 927. *Contra*, *Rose* v. *Commonwealth*, 19 Ky. Law Rep. 272, 40 S. W. 245. It is settled that to open a door or window completely shut, but not fastened in any way, is breaking. *Rex* v. *Hyams, supra; State* v. *Reid*, 20 Iowa 413; *Sparks* v. *State*, 34 Tex. Cr. Rep. 86, 29 S. W. 264. It is a useless refinement to hold that opening a closed door which is not fastened in any manner is a breaking, while to open further one that is partially open is not a breaking, as the force used in the two cases of either class is of the same character and degree, differing only in the continuance of the effort. *State* v. *Lapoint, supra; Claiborne* v. *State*, 113 Tenn. 261, 83 S. W. 352, 106 Am. St. Rep. 833, 68 L. R. A. 859.

DEATH BY WRONGFUL ACT—NECESSARY ALLEGATIONS AS TO BENEFICIARIES UNDER STATUTES.—Deceased was killed through defendant's negligence, and his administrator sued under the Missouri statute for damages for his wrongful death. The petition alleged that the deceased, at the time of his death, "was an unmarried adult person without minor child or children, natural born or adopted." There was no allegation that

there were in existence any next of kin or other person who could take by descent the amount recovered. *Held,* the petition was insufficient since there was no allegation that there were in existence beneficiaries entitled under the statute to recover. *Troll* v. *Laclede Gaslight Co.* (Mo.), 169 S. W. 337. See NOTES, p. 376.

DIVORCE—CUSTODY OF CHILDREN—MODIFICATION OF DECREE.—A husband was granted a divorce for the wife's adultery, and the custody of the two children of the marriage was granted to him. After two years the wife married a man in no way connected with her former offense and since that marriage had lived a blameless life. *Held,* the decree will be modified so as to authorize her to visit the children one afternoon in each third month. *Powers* v. *Powers* (App. Div.), 150 N. Y. Supp. 213.

On principle it seems as if the court ought to have power to modify, as the circumstances change, a decree as to the custody of the children, rendered on the divorce of the parents, even in the absence of statute so allowing or reservation in the original decree. See BISHOP, MARRIAGE, DIVORCE AND SEPARATION, 1187. But the contrary appears to have been the rule in New York, based on the ground that the decree was final and the court had no jurisdiction to alter or amend it. *Crimmins* v. *Crimmins,* 28 Hun (N. Y.) 200. But such power is now given in practically every state by statute. A statute giving power to the courts to modify a decree as to the custody of the children is not retroactive. *In re Haworth,* 59 App. Div. 393, 69 N. Y. Supp. 843. And a subsequent modification of the decree can only be made for reasons occurring after the final decree. *Dubois* v. *Dubois,* 96 Ind. 6; *Chandler* v. *Chandler,* 24 Mich. 176. Where the child is in the custody of a stranger it has been held that the mere change of condition of the mother and the proof that she is now a proper person to care for the child will warrant the court to notify a decree so as to give her the custody of the child. *Curtis* v. *Curtis,* 46 Wash. 664, 91 Pac. 188. But as between the parents it is well settled that the welfare of the child is the chief consideration in the modification of such a decree. *Brown* v. *Brown,* 71 Kan. 868, 81 Pac. 199; *Hewitt* v. *Long,* 76 Ill. 399; *Perry* v. *Perry,* 17 Misc. Rep. 28, 39 N. Y. Supp. 863. It has frequently been held that the mere visits of a mother to her child at long intervals after she has reformed is in no way detrimental to the welfare of the child and the reformation on the part of the mother ought to be rewarded by an occasional visit. *Perry* v. *Perry, supra; Breedlove* v. *Breedlove,* 27 Ind. App. 560, 61 N. E. 797; *Powers* v. *Powers, supra.* For the court should not disregard the maternal instinct. *Haley* v. *Haley,* 44 Ark. 429. But where the mother has not reformed and is still leading an adulterous life a decree will not be modified so as to allow her to visit her child. *Woodhouse* v. *Woodhouse,* 89 App. Div. 88, 85 N. Y. Supp. 442.

FEDERAL COURTS—JURISDICTION—REMOVAL OF CAUSES—SEPARABLE CONTROVERSY.—In a suit between citizens of New York, South Carolina, Del-